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DRAFT

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NSDEP-

Jorge H. Berkowitz, Ph.D.
Administrator
Hazardous Site Mitigation Administration
CN 028
Trenton, N.J. 08625

Re: Berry's Creek Superfund Site

Dear Dr. Berkowitz:

(EPA)
This is in response to your recent letter requesting the Environmental Protection Agency's participation in discussions with responsible parties involved in the Berry's Creek Superfund site. I understand that these discussions are aimed at negotiating a Consent Agreement for completion of a comprehensive Remedial Investigation/Feasibility Study (RI/FS) addressing the problem of mercury contamination in Berry's Creek and that the responsible parties have expressed an interest in having EPA participate. Accordingly, I will be happy to have my staff participate in the negotiations.

← With regard to the specific items raised in your letter, EPA will review and comment on both the draft Consent Agreements and the Scope of Work for the project, however I do not believe that it is necessary that EPA have a permanent member on the Technical Advisory Committee. Instead, we will arrange for a review of the documents by appropriate experts within the Regional Office.

I would note that if the defendant companies express a desire that EPA formally approve the consent agreement, it would require that we be kept apprised of the activities of the 'Management Team' discussed in the briefing memorandum attached to your letter.

✓ I am designating Sam Giante of the Hazard Assessment Section as project manager for Berry's Creek. He will contact Joe Maher to initiate EPA's review of available technical information.

Sincerely yours,

William J. Librizzi, Director
Office of Emergency & Remedial Response

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3. Does EPA wish to designate a member to the "Technical Advisory Committee" being formulated? Please note that the expertise of any recommended member should be in a field of study related to the problem at hand; namely, mercury contamination in an estuarine environment.

From our standpoint, it is hoped that EPA will take an active role in this project. The defendant companies have also expressed their desire that EPA actively participate. They want to be assured that the scope of the RI/FS being developed satisfies the requirements of the EPA and the National Contingency Plan.

I propose that a meeting be set up between your designated project manager and my staff in the very near future. My site manager, Joseph Maher, can be contacted at 609/984-6786 to set up this meeting or answer any questions you may have.

Very truly yours,



DR. JORGE H. BERKOWITZ
Administrator

HS40:cb
Attachment
cc: Ron Heksch, DAG

The chemical companies appealed this lower court decision to the Appellate Court. In 1981, the Appellate Court Judge upheld the lower court decision, and required NJDEP to prepare a "Clean Up Plan of Berrys Creek" for the courts consideration. It is important to note that the court was only requesting a plan for the cleanup of the Creek and not the site as well. The court ruled that NJDEP failed to prove that groundwater from the site was leaking into Berrys Creek and, therefore, it was appropriate to only cleanup the stream initially and then monitor it for a year to evaluate whether or not the site and the adjacent wetlands are sources of contamination.

The Cleanup Plan developed by NJDEP provided for the dredging of approximately a 12,000 foot stretch of Berrys Creek four (4) feet deep from the railroad bridge just north of the site to the Route 3 bridge just downstream (approximately 175,000 cu. yds.) with placement of the sediments in a secure dewatering/disposal facility to be constructed on approximately 19 upland acres of the site. Additionally, a cutoff wall (bentonite slurry) to the underlying clay layer would be constructed around the perimeter of the disposal site.

This Cleanup Plan was conditionally accepted by the Appellate Court Judge pending receipt of all necessary permits to implement the cleanup. Included among the required permits would be a U.S. Corps of Engineers 404 permit to dredge the stream, commercial dredging and waterfront development permits from NJDEP Coastal Resources, and a stream Encroachment Permit and Water Quality Certificate from NJDEP Water Resources.

The chemical companies made their final appeal to the New Jersey Supreme Court and January 10, 1983, the Supreme Court heard arguments by the defendants and the state. On July 21, 1983, the Supreme Court decided all points of the appeal in favor of the state.

Project Status

As previously described, the Supreme Court Judge conditionally accepted the state's cleanup plan pending receipt of all necessary permits. The major permit required is the C.O.E. permit pursuant to the provisions of Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act.

The Department made application for the 404 permit in September 1981. The C.O.E. review of the application resulted in the determination that an Environmental Impact Study would be necessary to properly evaluate the impact of the proposed dredging plan and in turn decide whether to issue the 404 permit or not. In September 1982, the C.O.E. forwarded to → NJDEP the E.I.S. Scope of Work they developed and in January 1983 forwarded its list of technical baseline data (a total of 17 tasks) that would have to be generated by the applicant (NJDEP) in order for the C.O.E. to prepare the E.I.S. ?

Shortly after the Supreme Court decision, Velsicol initiated a dialogue with the Department to discuss the possibility of cooperating in a joint effort to address the cleanup of the site.

On September 19, 1983, a meeting was held between NJDEP, HMDC, and Fred Zeigler - President, Environmental Resources Management Southeast to discuss the company's preliminary proposal and the requirements and conditions the Department would place upon any cooperative study effort at the site.

The outcome of this meeting was an agreement that NJDEP would objectively review a proposal to be developed by ERM - Southeast for generating the 17 task baseline data requirement of the Corps to do the E.I.S. and concurrently address the requirements of a Remedial Investigation/Feasibility Study as required under Federal Superfund regulations (much of the 17 task effort overlaps with the activities conducted for a Remedial Investigation).

On October 18, 1983, the ERM prepared Scope of Work was received by NJDEP and distributed for comment to all appropriate Department technical staff, HMDC, and the Corps of Engineers Waterways Experiment Station. On November 3, 1983, an internal meeting to discuss the proposal was held with all technical NJDEP and HMDC staff that had reviewed it. It was generally agreed that the proposal represented a good faith effort on the part of the companies and would serve as a good foundation to build upon.

Accordingly, the state decided to carry out Option 2 as long as substantive progress was made at the negotiation table. In the event that negotiations deteriorated, the state could proceed with Option 1 or opt for a third option which would be to pursue Superfund monies for this project.

Negotiation meeting #1 with the two (2) chemical companies was held on January 12, 1984. The non-negotiable items of any negotiated Consent Agreement were presented by the Department. These items were not well received by the companies and very little progress was made at this first meeting.

Prior to the second negotiation meeting, it was decided that two (2) separate teams of NJDEP personnel would be established to proceed with the negotiations. A "Technical/Scientific Team" would essentially concentrate on developing the scope-of-work for the RI/FS with ERM-Southeast while a "Management Team" would negotiate all the other elements of a Consent Agreement.

Negotiation meeting #2 between the chemical companies and the "Management Team" was held on February 7, 1984. Substantive progress appeared to be made towards the development of the elements of a mutually acceptable Consent Agreement. Negotiation meeting #3 is scheduled for March 7, 1984.

The "Technical Team" met with ERM-Southeast on February 15, 1984 to begin negotiation of the scope-of-work. This meeting included the initial development of a Technical Advisory Committee to be utilized as a support group during the RI/FS. The initial members designated to serve on this committee included representatives from HMDC, C.O.E. Waterways Experiment Station, NJDEP, and Velsicol. The committee will be expanded in the future to include representatives of academic institutions and the EPA. The first meeting of the Technical Advisory Committee is scheduled for March 21, 1984.

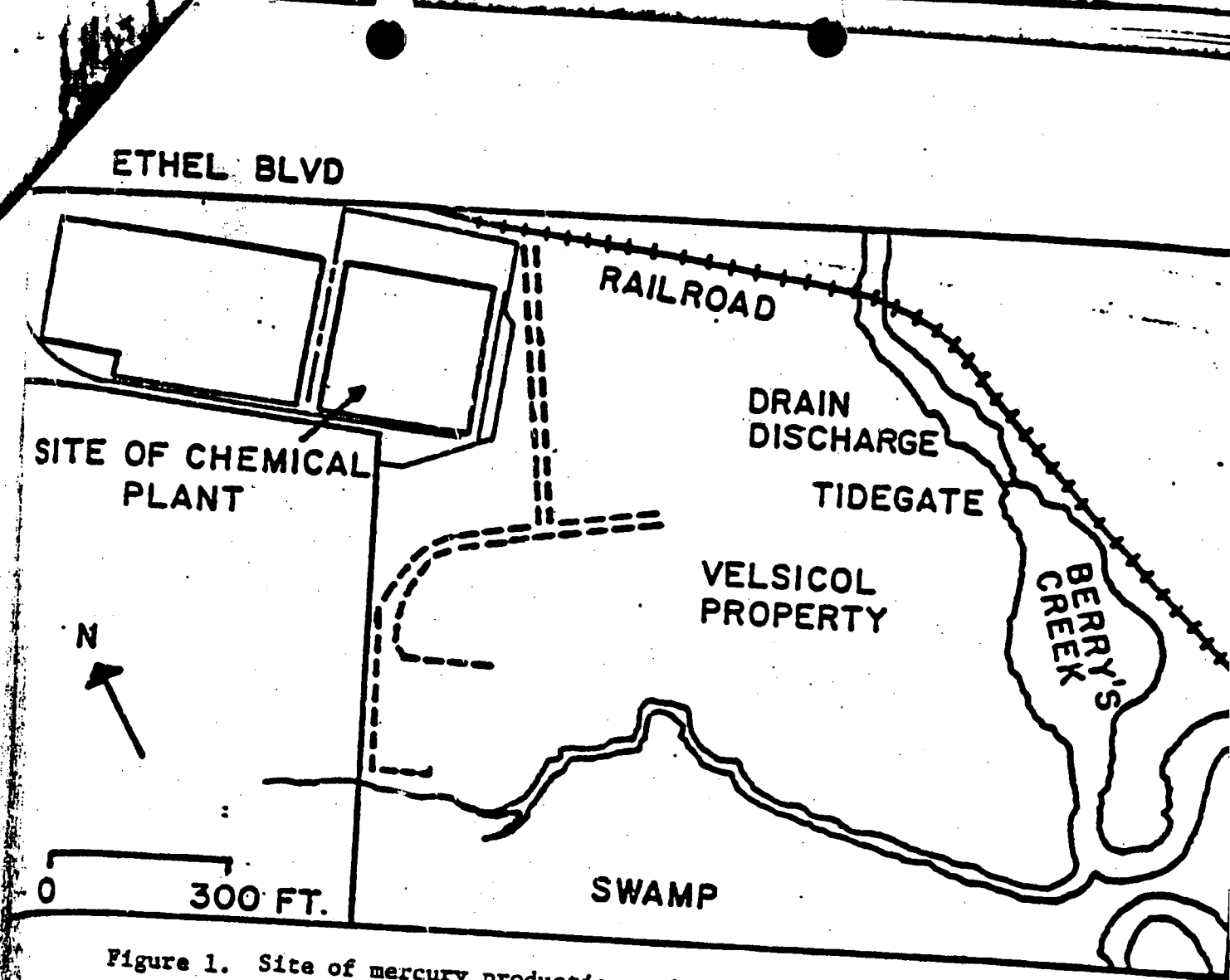


Figure 1. Site of mercury production and discharge.